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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,472	10/23/2003	Steven J. Brattesani	15783.1	9114

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EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/692,472	Applicant(s) BRATTESANI ET AL.	
	Examiner Michael Brown	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.  
     4a) Of the above claim(s) 23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

This application contains claims directed to the following patentably distinct species of the claimed invention: Group I, Claims 1-22 and 25, Group II, Claim 23, Group III, Claim 24.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. John Guynn on September 9, 2004 a provisional election was made without traverse to prosecute the invention of group I, claims 1-22 and 25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 23-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 16-17 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Moriyasu.

Moriyasu discloses in figures 1-15 an integrated remote control and massage device comprising a housing 1200 including at least one massage surface (the surface of 1200), a remote control input interface (page 11, lines 45-58), used to control a television, at least one motor (col. 3, lines 29-30) and the housing is sealed and includes a chamber (the vibrators are the housing is in a chamber).

### ***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriyasu in view of Moriyasu.

Moriyasu discloses in figures 1-15 an integrated remote control and massage device, substantially as claimed. The remote control input interface deactivates control over the entertainment device (the switch on the remote can be used to turn the television on or off while the motor is active. Moriyasu teaches in figure 13A a remote control input comprising at least one light source (LCD display), a touch screen (col. 11, line 41), touch pad 1501 and a switch 1504 for activating at least one motor. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the remote control input interface as disclosed by Moriyasu could be constructed with at least one light source, a touch screen, a touch pad and a switch for activating a motor as taught by Moriyasu. The light would be used to illuminate the remote control for use in the dark. The touch screen or the touch pad would be used to allow the user to interface the entertainment device from the remote control. The switch would be used to activate the motor to control the vibrators in the housing.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriyasu in view of Trivett.

Moriyasu discloses in figures 1-15 an integrated remote control and massage device, substantially as claimed. However, Moriyasu does not disclose the integrated remote control massage device having a locator, a receiver and a speaker or flashing light or rechargeable battery. Trivett teaches in figures 1-5 a remote control locator system comprising a device locator 10 that includes a receiver 30 that includes a speaker 40 and batteries 22. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the locator disclosed by Trivett could be incorporated into the remote control disclosed by Moriyasu in order to be able to locate the remote control if it is lost.

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriyasu in view of Hug, along with Trivett.

Moriyasu discloses in figures 1-15 an integrated remote control, substantially as claimed. However, Moriyasu does not disclose the gripable portion of the remote having ribs or being made of plastic. Hug teaches in figures 2 a remote control having a gripable portion 20 having ribs (col. 4, lines 40-43). Trivett teaches made a remote control made of plastic (col. 2, lines 65-66). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the ribs on the gripable portion of the remote control as taught by Hug could be incorporated into the remote control disclosed by Moriyasu in order to provide a better gripping surface for

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the user. The remote control could be made of plastic as taught by Trivett because it is a cheap manufacturing material.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriyasu in view of Diamond (CA '780).

Moriyasu discloses in figures 1-15 an integrated control and massage device, substantially as claimed. However, Moriyasu does not disclose a heating element in the massage surface. Moriyasu does teach changing the locations and number of vibrators in the housing (col. 3, lines 39-41). Thus, providing the concept of moving one of the vibrators. Diamond teaches using a heating element that includes infra-red (page 11, lines 25-26). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the heating element as taught by Diamond could be incorporated into the body of the massaging device disclosed by Moriyasu in order to be able to apply infra-red heat to the user's body.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. No additional prior art was cited during the first office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 703-308-2682. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Friday.

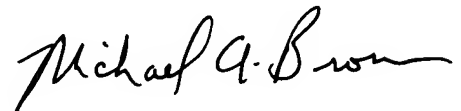
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown  
September 10, 2004

A handwritten signature in black ink that reads "Michael A. Brown". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

**MICHAEL A. BROWN**  
**PRIMARY EXAMINER**